



Patents Act 1977

1977 CHAPTER 37

PART II

PROVISIONS ABOUT INTERNATIONAL CONVENTIONS

European patents and patent applications

77 Effect of European patent (UK).

- (1) Subject to the provisions of this Act, a European patent (UK) shall, as from the publication of the mention of its grant in the European Patent Bulletin, be treated for the purposes of Parts I and III of this Act as if it were a patent under this Act granted in pursuance of an application made under this Act and as if notice of the grant of the patent had, on the date of that publication, been published under section 24 above in the journal; and—
- (a) the proprietor of a European patent (UK) shall accordingly as respects the United Kingdom have the same rights and remedies, subject to the same conditions, as the proprietor of a patent under this Act;
 - (b) references in Parts I and III of this Act to a patent shall be construed accordingly; and
 - (c) any statement made and any certificate filed for the purposes of the provision of the convention corresponding to section 2(4)(c) above shall be respectively treated as a statement made and written evidence filed for the purposes of the said paragraph (c).
- (2) Subsection (1) above shall not affect the operation in relation to a European patent (UK) of any provisions of the European Patent Convention relating to the amendment or revocation of such a patent in proceedings before the European Patent Office.
- [^{F1}(3) Where in the case of a European patent (UK)—
- (a) proceedings for infringement, or proceedings under section 58 above, have been commenced before the court or the comptroller and have not been finally disposed of, and

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- (b) it is established in proceedings before the European Patent Office that the patent is only partially valid,
 the provisions of section 63 or, as the case may be, of subsections (7) to (9) of section 58 apply as they apply to proceedings in which the validity of a patent is put in issue and in which it is found that the patent is only partially valid.]
- [^{F2}(4) Where a European patent (UK) is amended in accordance with the European Patent Convention [^{F3}or the Agreement on a Unified Patent Court], the amendment shall have effect for the purposes of Parts I and III of this Act as if the specification of the patent had been amended under this Act; but subject to subsection (6)(b) below.
- (4A) Where a European patent (UK) is revoked in accordance with the European Patent Convention [^{F4}or the Agreement on a Unified Patent Court], the patent shall be treated for the purposes of Parts I and III of this Act as having been revoked under this Act.]
- (5) Where—
- (a) under the European Patent Convention [^{F5}or the Agreement on a Unified Patent Court] a European patent (UK) is revoked for failure to observe a time limit and is subsequently restored [^{F6} or is revoked by the Board of Appeal and is subsequently restored by the Enlarged Board of Appeal][^{F7}or is revoked and subsequently restored by the Unified Patent Court]; and
- (b) between the revocation and publication of the fact that it has been restored a person begins in good faith to do an act which would, apart from section 55 above, constitute an infringement of the patent or makes in good faith effective and serious preparations to do such an act;
- he shall have the rights conferred by [^{F8}section 28A(4) and (5) above, and subsections (6) and (7) of that section shall apply accordingly.]
- [^{F9}(5A) Where, under the European Patent Convention [^{F10}or the Agreement on a Unified Patent Court], a European patent (UK) is revoked and subsequently restored (including where it is revoked by the Board of Appeal and subsequently restored by the Enlarged Board of Appeal), any fee that would have been imposed in relation to the patent after the revocation but before the restoration is payable within the prescribed period following the restoration.]
- (6) [^{F11}While this subsection is in force—
- (a) subsection (1) above shall not apply to a European patent (UK) the specification of which was published in French or German, unless a translation of the specification into English is filed at the Patent Office and the prescribed fee is paid before the end of the prescribed period;
- (b) subsection (4) above shall not apply to an amendment made in French or German unless [^{F12}a translation into English of the specification as amended] is filed at the Patent Office and the prescribed fee is paid before the end of the prescribed period.]
- (7) Where [^{F13}such a translation is not filed], the patent shall be treated as always having been void.
- (8) The comptroller shall publish any translation filed at the Patent Office under subsection (6) above.

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(9) Subsection (6) above shall come into force on a day appointed for the purpose by rules and shall cease to have effect on a day so appointed, without prejudice, however, to the power to bring it into force again.

[^{F14}(10) Subsection (1) does not apply and is to be treated as never having applied in respect of a European patent (UK) whose unitary effect is registered by the European Patent Office in the Register for unitary patent protection (see, in particular, the Unitary Patent Regulation).]

Textual Amendments

- F1** S. 77(3) substituted by Copyright, Designs and Patents Act 1988 (c. 48, SIF 67A), s. 295, **Sch. 5 para. 21(2)**
- F2** S. 77(4)(4A) substituted for subsection (4) by Copyright, Designs and Patents Act 1988 (c. 48, SIF 67A), s. 295, **Sch. 5 para. 21(3)**
- F3** Words in s. 77(4) inserted (coming into force in accordance with art. 1(2)) by The Patents (European Patent with Unitary Effect and Unified Patent Court) Order 2016 (S.I. 2016/388), arts. 1(2), **2(5)(a)** (with art. 3)
- F4** Words in s. 77(4A) inserted (coming into force in accordance with art. 1(2)) by The Patents (European Patent with Unitary Effect and Unified Patent Court) Order 2016 (S.I. 2016/388), arts. 1(2), **2(5)(a)** (with art. 3)
- F5** Words in s. 77(5)(a) inserted (coming into force in accordance with art. 1(2)) by The Patents (European Patent with Unitary Effect and Unified Patent Court) Order 2016 (S.I. 2016/388), arts. 1(2), **2(5)(b)(i)** (with art. 3)
- F6** Words in s. 77(5)(a) inserted (13.12.2007) by Patents Act 2004 (c. 16), s. 17(1), **Sch. 1 para. 2**; S.I. 2007/3396, art. 2(j)
- F7** Words in s. 77(5)(a) inserted (coming into force in accordance with art. 1(2)) by The Patents (European Patent with Unitary Effect and Unified Patent Court) Order 2016 (S.I. 2016/388), arts. 1(2), **2(5)(b)(ii)** (with art. 3)
- F8** Words substituted by Copyright, Designs and Patents Act 1988 (c. 48, SIF 67A), s. 295, **Sch. 5 para. 8(b)**
- F9** S. 77(5A) inserted (1.10.2014) by Intellectual Property Act 2014 (c. 18), s. 24(1), **Sch. para. 6**; S.I. 2014/2330, art. 3, **Sch.** (with art. 8)
- F10** Words in s. 77(5A) inserted (coming into force in accordance with art. 1(2)) by The Patents (European Patent with Unitary Effect and Unified Patent Court) Order 2016 (S.I. 2016/388), arts. 1(2), **2(5)(a)** (with art. 3)
- F11** S. 77(6) ceased to have effect (6.4.2005) by virtue of The Patents (Translations) Rules 2005 (S.I. 2005/687), art. **1 rule 23**
- F12** Words substituted by Copyright, Designs and Patents Act 1988 (c. 48, SIF 67A), s. 295, **Sch. 5 para. 21(4)**
- F13** Words substituted by Copyright, Designs and Patents Act 1988 (c. 48, SIF 67A), s. 295, **Sch. 5 para. 21(5)**
- F14** S. 77(10) inserted (coming into force in accordance with art. 1(2)) by The Patents (European Patent with Unitary Effect and Unified Patent Court) Order 2016 (S.I. 2016/388), arts. 1(2), **2(5)(c)** (with art. 3)

Modifications etc. (not altering text)

- C1** S. 77(9): 1.9.1987 appointed by S.I. 1987/288, **rule 4(1)** (subject to a saving in rule 4(2))

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 56(4)(a)(iiia) and word added by [S.I. 2006/1056 Sch. para. 2\(b\)](#) (This amendment comes into force on the day on which 2005 asp 13, s. 20 comes into force, see art. 1(2)(b))
- s. 63(3)(a) words in s. 63(3) renumbered as s. 63(3)(a) by [2004 c. 16 s. 2\(4\)](#) (Amendment not applied to legislation.gov.uk. S. 2(4) was repealed (29.4.2006) by S.I. 2006/1028, art. 2(4), Sch. 4)
- s. 63(3)(b) and word inserted by [2004 c. 16 s. 2\(4\)](#) (Amendment not applied to legislation.gov.uk. S. 2(4) was repealed (29.4.2006) by S.I. 2006/1028, art. 2(4), Sch. 4)